

REMARKS

This Amendment is responsive to the Office Action.¹ Claims 1, 3, 5-10, 13-18, 22-32 and 34 were presented for examination and were rejected. Claims 2, 4, 11, 12, 19-21, and 33 were previously canceled. Claims 1, 10, 18, 28 and 34 are independent claims and each is amended herein. Claim 35 is an independent claim and claim 36 is a dependent claim and both are new. Support for the amendments and the new claims can be found in the application, as filed. See, for example, at least Fig. 8 and discussion associated therewith, as well as paragraphs [0038] - [0041]. Claims 1, 3, 5-10, 13-18, 22-32 and 34-36 are pending.

The Rejections:

Claims 1, 3, 5, 9, 28 and 30-32 are rejected under 35 U.S.C. §103(a) as being unpatentable over Farris et al., U.S. Patent No. 5,751,789 (referred to hereinafter as “Farris”) in view of Knight, U.S. Patent Application Publication No. 2007/0060202 (referred to hereinafter as “Knight”) and in view of Javitt, U.S. Patent No. 6,285,857 (referred to hereinafter as “Javitt”).

¹ The Office Action may contain a number of statements characterizing the cited references and/or the claims which Applicant may not expressly identify herein. Regardless of whether or not any such statement is identified herein, Applicant does not automatically subscribe to, or acquiesce in, any such statement. Further, silence with regard to rejection of a dependent claim, when such claim depends, directly or indirectly, from an independent claim which Applicant deems allowable for reasons provided herein, is not acquiescence to such rejection of that dependent claim, but is recognition by Applicant that such previously lodged rejection is moot based on remarks and/or amendments presented herein relative to that independent claim.

Claim 6 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Knight, Javitt and well known Prior Art (MPEP 2144.05).

Claim 7 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Knight, Javitt and Ehreth U.S. Patent No. 6,246,750 B1 (referred to hereinafter as “Ehreth”).

Claim 8 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Knight, Javitt and McKenna et al. U.S. Patent No. 6,829,486 B2 (referred to hereinafter as “McKenna”).

Claims 10, 15, 16, 17, 18 and 23-26 are rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina et al., U.S. 2004/0214569 A1 (referred to hereinafter as “Cardina”) in view of Knight.

Claim 14 is rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Knight, Javitt and Sawada, U.S. 2005/0148315 A1 (referred to hereinafter as “Sawada”).

Claim 27 is rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Knight, Javitt and McKenna.

Claim 29 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Knight Javitt and Patron et al., (U.S. 2005/0063333 A1) (referred to hereinafter as “Patron”).

Claims 13 and 22 are rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Knight, Javitt, and further in view of well known prior art (MPEP 2144.05).

Claim 34 is rejected under 35 U.S.C. §103(a) as being un-patentable over Knight
in view of Javitt.

Applicant respectfully traverses these rejections, at least because the cited references taken individually or in any reasonable combination do not disclose or suggest all claim limitations of each pending claim for the following reasons.

Independent Claim 1:

Consider, first, independent claim 1 which is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Knight and Javitt. The Office Action admits that Farris and Knight do not disclose wherein the wireless transceiver is configured to relay data from a plurality of other wireless transceivers, etc. (Office Action, pg 4) Applicant agrees. The Office Action then alleges that Javitt teaches this and that Javitt can be combined with the other two references. Whether or not these allegations have any merit is a moot point because, Javitt has been rendered ineffective by the instant amendment. Consider claim 1 which recites, *inter alia*:

“ wherein the wireless transceiver is configured to relay data from another wireless transceiver that has lost connectivity to the wireline network, said another wireless transceiver being connected to said wireless transceiver through no more than one other wireless transceiver that has also lost connectivity to the wireline network when said data is being relayed, said another and said other wireless transceivers having been wireline-connected to the wireline network during normal operation.”

(emphasis added) Applicant has amended claim 1 which recites, in part: “said another wireless transceiver being connected to said wireless transceiver through no more than one other wireless transceiver.” This is shown in Applicant’s Fig. 8, in which the

wireline connections to subscribers C and D have both failed but where subscribers B and D are not within range of each other for direct wireless connectivity. Subscriber D may connect with subscriber B, but only by relaying its wireless data through subscriber C.

In particular, the wireless transceiver in network interface unit (NIU) B relays data from another wireless transceiver in NIU D connected through no more than one other wireless transceiver located in NIU C. This is not disclosed or suggested by Javitt. Javitt discloses a free space, line of sight (LOS), electro-magnetic communication (i.e., via light or microwave) system that associates a relay point or end point with each user to receive and transmit information via LOS principles. (Abstract) Consequently, each relay point must have, at a minimum, two transceivers. One transceiver receives information from a source location which provides that information to the one transceiver in LOS straight-line direction A, while a second transceiver at that same relay point relays that information in LOS straight-line direction B to a destination location. Javitt discloses the fact that two transceivers are needed at a minimum in each relay node; see at least column 1, lines 47-48 and column 3, lines 29-31.

Therefore, Javitt does not disclose or suggest “said another wireless transceiver being connected to said wireless transceiver through no more than one other wireless transceiver” as recited in claim 1 because Javitt always needs at least two wireless transceivers per relay node.² Since Farris and Knight, admittedly, do not disclose or suggest this feature, and since Javitt does not teach this feature, then all references taken individually or in any reasonable combination also do not disclose or suggest this feature.

² Javitt teaches an end point with one transceiver but the end point does not relay information which makes the end point irrelevant vis-a-vis the Office Action’s assertion of Javitt against this claim element.

Accordingly, for at least this reason, the 35 U.S.C § 103(a) rejection of claim 1 should be withdrawn and the claim allowed.

All claims that are dependent from claim 1, claims 3 and 5-9, are likewise allowable, at least for reasons based on their dependencies from an allowable base claim.

Independent claim 10:

Consider, next, independent claim 10 which is rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in view of Knight and Javett. The Office Action admits that the combination of Cardina and Knight does not disclose relaying through more than one other network subscriber. (Office Action, pg 12) Applicant agrees. The Office Action then relies upon Javett to allegedly teach this notion. (Office Action page 12) Whether or not these allegations have any merit is a moot point because Javitt has been rendered ineffective by the instant amendment. Claim 10 recites, *inter alia*:

“said automatically establishing including: (a) providing wireless-connectivity directly between a first transceiver associated with said network subscriber and a second transceiver associated with a network subscriber other than said one said more than one other network subscriber, and (b) providing wireless connectivity directly between said second transceiver and a third transceiver associated with said one said more than one other network subscriber.” (emphasis added)

Support for this amendment is found at least in Fig. 8 wherein a failed wireline is shown at NIU D, “more than one other network subscriber” may be those associated with NIU’s B and C, and where NIU B has normal wireline connectivity. Thus, the “first transceiver” may be that in NIU D, the “second transceiver” may be that in NIU C and the “third transceiver” may be that in NIU B.

Javitt teaches a requirement of having at least two transceivers per relay point.

Thus, any relay point that receives an LOS signal in the first transceiver must hand off the information to the second transceiver at that same relay point for transmission from that relay point. Therefore, Javitt cannot disclose or suggest “(a) providing wireless-connectivity directly between a first transceiver associated with said network subscriber and a second transceiver associated with a network subscriber other than said one said more than one other network subscriber, and (b) providing wireless connectivity directly between said second transceiver and a third transceiver associated with said one said more than one other network subscriber” as recited in claim 10. (emphasis added)

Accordingly, for at least this reason, the 35 U.S.C § 103(a) rejection of claim 10 should be withdrawn and the claim allowed.

All claims that are dependent from claim 10, claims 13-17, are likewise allowable, at least for reasons based on their dependencies from an allowable base claim.

Independent claim 18:

Independent claim 18 is rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in view of Knight and Javett. Claim 18 recites, *interalia*:

providing backup network connectivity to said one node via a wireless network by wirelessly relaying data directly from a first transceiver in said one node to a second transceiver in another node in the plurality of network nodes which had an active wireline connection to the network service provider, said second transceiver being wirelessly connected directly to a third transceiver in yet another node in the plurality of nodes that has an active wireline connection to the network service provider. (emphasis added)

Support for this amendment is found at least in Fig. 8, where “a first transceiver” may be included in NIU D, “a second transceiver” may be included in NIU C and “a third transceiver” may be included in NIU B.

The Office Action says that the combination of Cardina and Knight does not disclose relaying the service via a wireless connection through more than one other network subscriber and Applicant agrees. (Office Action pg 12) The Office Action then relies on Javitt to relay a service via wireless connection through more than one other network subscriber. (Office Action pg 12) But, Javitt needs, at a minimum, two transceivers per relay point as discussed above. Therefore Javitt cannot disclose or suggest: “...wirelessly relaying data directly from a first transceiver in said one node to a second transceiver in another node in the plurality of network nodes which had an active wireline connection to the network service provider, said second transceiver being wirelessly connected directly to a third transceiver in yet another node in yet another node in the plurality of nodes that has an active wireline connection to the network service provider” as recited in claim 18.

Since the combination of Cardina and Knight, admittedly, do not teach this limitation and since Javitt also does not teach this limitation, then the combination of the three references also does not teach or suggest this limitation. Accordingly, the 35 U.S.C § 103(a) rejection of claim 18 should be withdrawn and the claim allowed.

All claims that are dependent from claim 18, claims 22-27, are likewise allowable, at least for reasons based on their dependencies from an allowable base claim.

Independent claim 28:

Consider, next, independent claim 28 which is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in view of Knight and Javitt. Claim 28 recites, *inter alia*:

wherein the wireless transceiver is configured to relay data directly from another wireless transceiver in another NIU to which its respective one of said wireline connections has failed, the another wireless transceiver relaying said data directly from yet another wireless transceiver in yet another NIU that is wireline-connected to the wireline network.

Support for this amendment is found at least in Fig. 8 wherein the “wireless transceiver” may be included in NIU D, the “another wireless transceiver” may be included in NIU C and the “yet another wireless transceiver” may be included in NIU B.

The Office Action admits that the combination of Farris and Knight does not disclose relaying data from yet another wireless transceiver. (Office Action page 8) Applicant agrees. The Office Action relies on Javitt to teach “wireless transceivers configured to relay data from a plurality of another wireless transceivers.” (Office Action pg 8) Because of Javitt’s requirement of two wireless transceivers per relay point at a minimum, Javitt does not disclose or suggest “wherein the wireless transceiver is configured to relay data directly from another wireless transceiver in another NIU....the another wireless transceiver relaying said data directly from yet another wireless transceiver in yet another NIU that is wireline-connected to the wireline network” as recited in claim 28. Accordingly, the 35 U.S.C § 103(a) rejection of claim 28 should be withdrawn and the claim allowed.

All claims that are dependent from claim 28 (claims 29-32) are likewise allowable, at least for reasons based on their dependencies from an allowable base claim.

Independent Claim 34:

Consider, next, independent claim 34 which is rejected under 35 U.S.C. §103(a) as being un-patentable over Knight in view of Javitt. Claim 34 recites, *inter alia*:

said one node having a first transceiver, said other node having a second transceiver and said third node having a third transceiver, wherein said wirelessly relaying data includes said first transceiver wirelessly communicating directly with said third transceiver and said second transceiver wirelessly communicating directly with said second transceiver.

Support for this amendment is found at least in Fig. 8 wherein the “first transceiver” may be that in NIU D, the “second transceiver” may be that in NIU B, and the “third transceiver” may be that in NIU C.

The Office Action admits that Knight does not disclose relaying data indirectly between two nodes through a third node associated with a third network subscriber. Applicant agrees. (Office Action pg 20) The Office Action relies on Javitt to disclose wirelessly relaying data indirectly between two nodes through a third node associated with a third network subscriber. (Office Action pg 20) But, Javitt requires two transceivers, minimum, per relay point. Therefore, Javitt does not disclose or suggest: “said one node having a first transceiver, said other node having a second transceiver and said third node having a third transceiver, wherein said wirelessly relaying data includes said first transceiver wirelessly communicating directly with said third transceiver and said third transceiver wirelessly communicating directly with said second transceiver” as

recited in claim 34. Accordingly, the 35 U.S.C § 103(a) rejection of claim 34 should be withdrawn and the claim allowed.

New claim 35 is supported by the application as filed and is allowable for reasons similar to, or the same as, those given above.

Dependent claim 36, dependent from claim 18, is supported by the application as filed, e.g., specification paragraphs [0038] - [0041]. Claim 18 is allowable at least for reasons based on its dependence from an allowable base claim. In addition, the feature of claim 36, is not disclosed or suggested in the applied references.

Applicant does not acquiesce in the combinability of these references. Applicant reserves its rights to present full arguments rebutting these reference-combinations in subsequent responses if need be. Applicant views its instant amendment and remarks as sufficient to overcome the rejections of all pending claims.³

³ As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such assertions/requirements in the future.

CONCLUSION

Reconsideration and allowance of the pending claims are respectfully requested based on the above amendments and remarks. It is respectfully submitted that all claims and, therefore, this application are in condition for allowance and prompt passage to issue is respectfully requested.

To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to deposit account number 07-2347. Please charge any other fees due, or credit any overpayment made to that account.

Respectfully submitted,

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/Joel Wall/
Joel Wall
Attorney for Applicant
Registration No. 25,648

Verizon
Patent Management Group
1320 North Courthouse Road, 9th Floor
Arlington, VA 22201
CUSTOMER NO. 25,537